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Supreme Court of the United States.

OCTOBER TERM, 1967.

No.

EDMUND DINIS ET AL.,
Appellants,
v.
JOHN A. VOLPE ET AL.,
Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.

JURISDICTIONAL STATEMENT.

Opinions Below.

The opinion of the United States District Court for the District of Massachusetts granting an interlocutory declaratory decree is reported in 264 F. Supp. 425, and is attached hereto in Appendix "A." The final judgment of said Court and its opinion is not yet reported, but is attached hereto in Appendix "B."

Jurisdiction.

This was a civil action alleging past, present and continuing violations of rights of representation and sufferage

guaranteed the appellants and other citizens of the Commonwealth of Massachusetts similarly situated by (*a*) article I, section 2, of the Constitution of the United States and (*b*) by the Fourteenth Amendment to the Constitution of the United States. This proceeding was brought pursuant to 28 U.S.C. 1331(a), 28 U.S.C. 1343(3) and (4) and 28 U.S.C. 2201. The judgment of the Court was entered on October 3, 1967. A notice of appeal was filed with the United States District Court for the District of Massachusetts by the appellants on October 9, 1967. The jurisdiction of this Court to review the judgment of the District Court on its appeal is conferred by 28 U.S.C. 1253. That such jurisdiction exists in the circumstances of this case is sustained by the following decisions:

Fortson v. Morris, 385 U.S. 231 (1966).
Fortson v. *Toombs,* 379 U.S. 621 (1965).
Baker v. *Carr,* 369 U.S. 186 (1962).
Gray v. *Sanders,* 372 U.S. 368 (1963).
Wesberry v. *Sanders,* 376 U.S. 1 (1964).

Statute Involved.

Massachusetts General Laws, chapter 57, section 1, as amended by Acts of 1962, chapter 315, and Acts of 1967, chapter 472, and the Fourteenth Amendment and article I, section 2, of the Constitution of the United States, all set forth in Appendix "C" attached hereto.

Questions Presented.

(1) Whether the Massachusetts General Court, House and Senate, which is constitutionally malapportioned, is capable of establishing congressional districts in conform-

ity with the Fourteenth Amendment to the Constitution of the United States and article I, section 2, thereof.

(2) Pursuant to the affidavit of the appellants filed in accordance with Rule 56, Federal Rules of Civil Procedure, and the Court's admitted knowledge of litigation in both the Commonwealth of Massachusetts and the Federal Courts, should the United States District Court for the District of Massachusetts have (*a*) first determined if the Massachusetts General Court was in fact malapportioned; and/or (*b*) granted the injunctive relief prayed for in the appellants' application for injunctive relief; and/or (*c*) continued cross-motions for summary judgment until such time as that question was adjudicated as prayed for by appellants.

Statement.

On October 20, 1966, appellants filed a civil suit charging violations of rights and sufferance guaranteed them by article I, section 2, United States Constitution, and the Fourteenth Amendment thereto. These violations, it was alleged, resulted in great disparities between the populations of the twelve congressional districts in the Commonwealth of Massachusetts, such that citizens residing in the largest populated congressional district had a disproportionately small voice in selecting Massachusetts representatives, in violation of said Fourteenth Amendment and article I, section 2. Chapter 57, section 1, of the General Laws of the Commonwealth of Massachusetts, as amended by Acts of 1962, chapter 315, divided the districts in question. The complaint asked for a declaration that this statute was unconstitutional and for injunctive relief restraining the appellees from assuming any responsibility or taking action with respect to nomination or election of repre-

sentatives to the Congress of the United States from the congressional districts as they are now constituted.

The appellees filed motions to dismiss on the grounds of failure to state a claim upon which relief could be granted.

The United States District Court on February 15, 1967, found that chapter 57, section 1, of the General Laws of the Commonwealth, as amended by chapter 315, Acts of 1962, violated article I, section 2, of the Constitution of the United States and was invalid as it did not conform to the "one person, one vote." The Court stated it would withhold further action until after the end of the current session of the Massachusetts Legislature and retained jurisdiction over the parties until further order of the Court.

On June 29, 1967, appellants filed an application for injunctive relief praying for a permanent injunction restraining appellees from assuming any responsibility or taking any action with respect to the election of representatives to the Congress of the United States, stating that the Massachusetts House and Senate were unconstitutionally apportioned, and therefore the use of a malapportioned Legislature to determine districts with respect to nomination or election of representatives to Congress was to perpetuate the electoral vices that the Court had decreed to be unconstitutional. The application was denied on July 12, 1967, without opinion.

On September 7, 1967, appellants moved to reinstate the application for injunctive relief and for rehearing. Appellants also moved to continue further hearing on cross-motions for summary judgment, stating there was pending a complaint in the District Court, judgment in which would have a direct bearing on the motion for summary judgment in this action. The District Court denied both motions on September 8, 1967. Appellees have never denied appellants' allegation that the Massachusetts House and Senate

as presently constituted were and are malapportioned; and, in fact, on October 31, 1967, the Supreme Court of the Commonwealth of Massachusetts stated that it is inclined to be of the opinion that article 21 of the State Constitution is unconstitutional insofar as it required apportionment on the basis of legal voters.

On September 11, 1967, appellants filed an affidavit in accordance with Rule 56 of Federal Rules of Civil Procedure stating, among other things, that the Massachusetts General Court, House and Senate, was malapportioned and therefore unconstitutional and that the provisions of the Massachusetts Constitution which govern redistricting of the General Court are unconstitutional. This Affidavit, Appellants' Motion to Continue Further Hearing on Cross-Motions for Summary Judgment, and Application for Injunctive Relief are attached hereto as Appendix "D."

On September 18, 1967, the action came on for further hearing, and the Court ordered on October 3, 1967, that chapter 57, section 1, of the General Laws of the Commonwealth of Massachusetts, as most recently amended by Acts of 1967, chapter 472, effective July 26, 1967, complied with article I, section 2, of the Constitution of the United States and was valid. The Court then ordered that judgment be entered for the appellees and the action be dismissed without costs. The District Court stated in its opinion that it would not consider whether the Massachusetts Legislature is or is not malapportioned, and contented itself with rejecting the argument based on an "asserted malapportionment." The District Court also stated it was not aware of any case depriving a malapportioned Legislature of its status as a de-facto Legislature, and further stating that, if in fact a malapportioned Legislature could choose a Governor, it saw no reason why it could not establish congressional districts. *Fortson* v. *Morris,* 385 U.S. 231 (1966).

The Questions are Substantial.

The appeal presents important constitutional questions involving rights of representation and sufferage. While the precise point in issue has not been (but ought to be) settled by this Court, appellants contend that fundamental principles regarding rights of representation compel the conclusion that a malapportioned Legislature, though able to function by judicial sufferance in certain areas, may not function in an area so basic to our republican form of government. All the vices found inherent in a malapportioned Legislature are inherent in that body's choice of congressional districts. To allow a malapportioned Legislature to determine these congressional districts is to perpetuate this initial electoral vice.

Conclusion.

For the reasons stated, the questions presented by this appeal are substantial and are of public importance. It is respectfully submitted that probable jurisdiction be noted.

By EDMUND DINIS,
Attorney for Appellants.

Appendix "A."

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDMUND DINIS, ET AL.
v.
JOHN A. VOLPE, ET AL.

Civil Action No. 66-767-G

Interlocutory Declaratory Decree.

This action came on for hearing before the Court, Woodbury, Senior Circuit Judge, and Wyzanski and Garrity, District Judges, and the issues having been duly heard on cross motions for summary judgment and a decision having been duly rendered,

It is Declared

that Chapter 57, section 1, of the General Laws of the Commonwealth of Massachusetts, as amended by Acts of 1962, Chapter 315, violates Art. I, §2 of the Constitution of the United States and is invalid.

The court will withhold further action until after the end of the current session of the Massachusetts Legislature. Jurisdiction over the parties is retained until further order of the court.

Dated at Boston, Massachusetts, this 15th day of February, 1967.

/s/ RUSSELL H. PECK
Clerk of Court

/s/ PETER WOODBURY
Senior Circuit Judge

/s/ CHARLES E. WYZANSKI, JR.
United States District Judge

/s/ W. ARTHUR GARRITY, JR.
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDMUND DINIS, ET AL.
v.
JOHN A. VOLPE, ET AL.

Civil Action No. 66-767-G

Substitution of Attorney General Richardson as a Party Defendant.

Elliot L. Richardson, as Attorney General of the Commonwealth of Massachusetts, is substituted as a party defendant, pursuant to Rule 25(d)(1), Fed. R. Civ. P., for Edward W. Brooke, whom he succeeded in office.

/s/ W. ARTHUR GARRITY, JR.
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 66-767-G

EDMUND DINIS, ET AL.
Plaintiffs,
v.
JOHN A. VOLPE, as Governor of the Commonwealth of Massachusetts,
and
ELLIOT L. RICHARDSON, as Attorney General of the Commonwealth of Massachusetts,
and
KEVIN H. WHITE, as Secretary of the Commonwealth of Massachusetts,
Defendants.

Woodbury,* *Senior Circuit Judge,* and Wyzanski and Garrity, *District Judges.*

Opinion of the Court.

February 15, 1967.

WOODBURY, *Senior Circuit Judge.* This suit is brought by seven registered voters (one in each of the Third, Fourth, Fifth, Sixth, Ninth, Tenth and Eleventh Congressional Districts of the Commonwealth of Massachusetts), in their own behalf and in behalf of other eligible voters similarly situated, against the Governor, the Secretary of State and the Attorney General of Massachusetts. The prayer is for a declaration that the current Massachusetts Apportionment Act, Chapter 315, Acts of 1962, General Laws Chapter 57 § 1, as amended, is unconstitutional and

*Sitting by designation.

for an injunction restraining the defendants "from assuming any responsibility or taking any action with respect to the nomination or election of Representatives to the Congress of the United States" from the Congressional Districts as they are now constituted. There being no genuine issue as to any material fact the case comes before this duly constituted district court of three judges on cross motions for summary judgment.

Application of the provisions of § 22 of the Act of June 18, 1929, providing for the apportionment of Representatives in Congress, 46 Stat. 26, 27 as amended 2 U.S.C. § 2 a, resulted after the 1960 census in the reduction of the Massachusetts delegation to the National House of Representatives from 14 to 12. Upon notification of this change as federal law requires, the Massachusetts House and Senate by joint order established a joint special committee "for the purpose of recommending a new division of the commonwealth into congressional districts in conformity with existing law." The committee split strictly along party lines and filed majority and minority reports. The Massachusetts Legislature did not adopt either report but enacted an apportionment of its own. The population discrepancies among the congressional districts as established by the legislature and among the districts as they would have been had either the majority or minority report of the joint special committee been adopted are shown by the following table, in which the "Deviation" figures denote the variations from an ideal or average size district and the "%" figures denote the percentages of such deviations:

Districts	Legislature's Plan			Committee Majority Plan			Committee Minority Plan		
	Population	*Deviation*	*%*	*Population*	*Deviation*	*%*	*Population*	*Deviation*	*%*
1	376,336	—52,712	—12.4	404,541	—24,611	—5.7	404,727	—24,425	—5.7
2	388,578	—40,470	— 9.3	406,675	—22,477	—5.2	408,278	—20,874	—4.9
3	441,558	+12,510	+ 3.	405,036	—24,116	—5.6	407,028	—22,124	—5.2
4	444,069	+15,021	+ 3.5	406,311	—22,841	—5.3	415,611	—13,541	—3.2
5	450,716	+21,668	+ 5.1	445,593	+16,441	+3.7	448,721	+19,569	+4.6
6	452,956	+23,908	+ 5.6	449,429	+20,277	+4.8	452,956	+23,804	+5.6
7	392,350	—36,698	— 8.6	408,088	—21,064	—3.9	408,692	—20,460	—4.8
8	420,596	— 8,452	— 1.9	449,120	+19,968	+4.7	450,129	+20,977	+4.9
9	478,962	+49,914	+11.7	450,438	+21,286	+5.	407,839	—21,313	—5.
10	456,308	+27,260	+ 6.3	445,396	+16,244	+3.6	445,200	+16,408	+3.7
11	441,180	+12,132	+ 2.8	426,830	— 2,322	— .5	453,527	+24,375	+5.7
12	404,969	—24,079	— 5.6	452,438	+23,276	+5.5	447,187	+18,135	+4.2
Total	5,148,578			5,149,895			5,149,895		
Ideal (1/12)		429,048			429,152			429,152	
Variation between smallest and largest		102,626 (1st-9th)			47,887 (1st-12th)			48,790 (1st-11th)	
Ratio smallest to largest		1 to 1.27			1 to 1.12			1 to 1.12	

It is apparent that under the plan adopted by the legislature the difference in population between the largest and smallest districts, viz., the 1st and 9th, is 102,626, or approximately ¼ the size of an ideal district. Under the plans proposed in the majority and minority reports the differences between the largest and smallest districts were slightly less than 50,000, or approximately 1/10 the size of an ideal district.

In *Wesberry* v. *Sanders,* 376 U.S. 1 (1964), decided some two years after the legislative apportionment here under consideration, the Supreme Court laid down the constitutional principles to be applied by state legislatures in establishing congressional districts. It said, pages 7 and 8: "We hold that, construed in its historical context, the command of Art. I, § 2, that Representatives be chosen 'by the People of the several States' means that as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's." That is to say, the Court in *Wesberry* applied under Art. I § 2 the "one person, one vote" principle, see *Gray* v. *Sanders,* 372 U.S. 368, 381 (1963), to congressional districting which it had applied earlier in *Baker* v. *Carr,* 369 U.S. 186 (1962), under the Equal Protection Clause of the Fourteenth Amendment to districting for the election of representatives to the lower houses of state legislatures.[1]

Although seats in both houses of bicameral state legislatures and seats in the United States House of Representatives must be apportioned on the basis of population, mathematical precision is not constitutionally required. The Court in *Reynolds* v. *Sims,* 377 U.S. 533, 577 (1964), recognized that arithmetical equality of districts is a prac-

[1] It applied the same principle to districting for the election of representatives to the upper houses of bicameral state legislatures in *Reynolds* v. *Sims,* 377 U.S. 533, 568-571 (1964).

tically unattainable ideal. Moreover, even if arithmetical equality of districts based upon the latest census (reapportionment more frequently than after each decennial census is not constitutionally necessary, *Reynolds* v. *Sims*, *supra*, 583), could be achieved by disregarding locally established voting precincts, which we do not understand to be a constitutional requirement, numerical equality would not obtain for long because of inevitable shifts in population from one area of a state to another. Recognizing these facts the Supreme Court has not set mathematical bounds to the scope of constitutionally permissible deviation from the ideal quotient.[2] On the contrary the Court has specifically warned that apportionment cases are not to be decided by solving an exercise in grade school arithmetic. In *Roman* v. *Sincock*, 377 U.S. 695, 710 (1964), the Court was careful to point out that in affirming the decision below it did not mean to indicate any approval of the district court's attempt to state in mathematical language the constitutionally permissible bounds of discretion in deviating from apportionment according to population. It said:

> "In our view the problem does not lend itself to any such uniform formula, and it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a state legislative apportionment scheme under the Equal Protection Clause. Rather, the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faith-

[2] The ideal quotient, or ideal ratio, is the number obtained by dividing the number of inhabitants by the number of their representatives to be chosen. In this case it is the population of Massachusetts as of the last census, 5,148,578, divided by the number of representatives allocated to it, 12, or 429,048.

ful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

This language applies specifically to the apportionment of Representatives to state legislatures. Nevertheless, we think it clear that the language also applies to the apportionment of Representatives to the United States Congress. Of course figures are essential to show that population disparity of districts is *de minimis*, or, on the other hand, to show that population disparity is so gross as to suggest, if not clearly to establish, legislative disregard for the "one person, one vote" principle. The actual test, however, is not mathematical but is what is "practicable" under the particular circumstances of the state involved. Measured by this test the Massachusetts Congressional Apportionment Act does not pass constitutional muster. The reason for this is that there is nothing whatsoever before us to show that it would not have been entirely "practicable" for the legislature to have districted the Commonwealth not as it did, but as recommended by either the majority or minority of its joint special committee which, had it done so, would have provided districts more nearly equal in population as the above table clearly shows. This in a nut shell disposes of the case at bar. But we would be less than frank if we ended our opinion at this point.

First and foremost we wish clearly to emphasize that we do not intend to imply, far less to hold, that apportionment according to either committee report would meet the federal constitutional standard. For all that has been made to appear it would be entirely "practicable" to divide the Commonwealth into even more nearly numerically equal districts. Moreover, it is evident from the joint special

committee's reports that, lacking the guidance of *Wesberry* v. *Sanders*, neither the majority nor the minority confined its consideration to population but gave weight to constitutionally extraneous matters such as area.

In the second place we think discussion of the proper use of other cases as precedents is in order.

While staying within mathematical limits judicially approved in comparable congressional districting cases is not necessarily to stay within constitutional bounds for the reason, as we have already pointed out, that apportionment cases are not to be decided by application of any mathematical formula but must be solved by the test of practicability with reference to the specific situation present in the state involved,[3] nevertheless deviations from the ideal quotient judicially disapproved in other cases do give some indication of the limits of constitutional departure from numerical equality. This invites discussion of *Grills* v. *Branigin*, 255 F. Supp. 155 (S.D. Ind. 1966), heavily relied upon by the defendants.

In that case a majority of a three-judge district court for the Southern District of Indiana held constitutionally acceptable the Indiana Congressional Reapportionment Act of 1965 in a factual context rather strikingly similar to the present.[4] Specifically the court held that an extreme varia-

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[3] See *Reynolds* v. *Sims*, *supra*, 578, wherein the Court said: "What is marginally permissible in one State may be unsatisfactory in another, depending on the particular circumstances of the case." See also *Swann* v. *Adams*, *infra*, in which the Court said: ". . . the fact that a 10% or 15% variation from the norm is approved in one State has little bearing on the validity of a similar variation in another State."

[4] The majority of the court in doing so said it was "not unmindful" of the likelihood of improvements by subsequent legislation and "strongly suggested" that the General Assembly of Indiana take action to eliminate "any abnormalities in the 1965 congressional reapportionment Act."

tion in the population of congressional districts from 369,663 to 454,208, or 84,545, that individual district fluctuations from an under population of 12.8% to an over population of 7.2% for a total variance from the least to the highest populated district of 20%,[5] did not render the apportionment constitutionally invalid.

But on appeal *sub nom. Duddleston* v. *Grills* the Supreme Court on January 9, 1967, vacated the judgment of the district court and remanded for further consideration in the light of *Swann* v. *Adams,* decided on the same day, and also in the light of *Wesberry* v. *Sanders* and *Reynolds* v. *Sims, supra.* Having already discussed the last two cases we turn to *Swann* v. *Adams,* 385 U.S. 440.

Swann v. *Adams* is a state legislative apportionment case. In it a three-judge district court for the Southern District of Florida held a Florida apportionment constitutionally valid although the senate districts ranged in population from 87,595 to 114,053 or from 15.09% over represented to 10.56% under represented and the house districts ranged in population from 34,584 to 48,785 or from 18.28% over represented to 15.27% under represented. On appeal the Supreme Court reversed. It said: "We reverse for the failure of the State to present or the District Court to articulate acceptable reasons for the variations among the populations of the various legislative districts with respect to both the senate and house of representatives."

The Court reiterated that mathematical exactness is not required in state apportionment plans. It said at page 444: "*De minimis* deviations are unavoidable, but variations of 30% among senate districts and 40% among house districts can hardly be deemed *de minimis* and none of our cases suggests that differences of this magnitude will be approved

[5] None of the districts varied from the ideal population figure (423,863) by as much as 15% and only one by more than 10%.

without a satisfactory explanation grounded on acceptable state policy." Defining "acceptable state policy" sufficient to justify deviations from a strict population basis for apportionment, the Court, referring to *Reynolds* v. *Sims* at page 579 said: ". . . variations from a pure population standard might be justified by such state policy considerations as the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or historical boundary lines." The Court declared that it had no alternative but to reverse because "no attempt had been made to explain or justify the many variations among the legislative districts."

Since the Court vacated the judgment in *Duddleston* v. *Grills* and remanded for reconsideratiton in part on *Swann* v. *Adams* and *Reynolds* v. *Sims,* both state legislative apportionment cases, there can be no doubt that the principles enunciated in those cases apply also in congressional apportionment cases like *Duddleston* and the case at bar.

We have discussed the opinion in *Swann* v. *Adams* in some detail and quoted from it at some length not merely because it is the last authoritative word on the subject but more importantly because, as the dissenting justices point out, it announces a departure from past practice in that it casts the burden on the state of explaining or justifying whatever departures there may be, within of course constitutionally imposed limits, from a strict population basis for districting. That is to say, states now must be prepared to show a valid reason for any departure, beyond *de minimis,* from districting strictly on the basis of population.

We shall not now grant any injunctive relief. Instead, since the Massachusetts Legislature is now in session and the next congressional election is almost two years distant, and since "legislative reapportionment is primarily a mat-

ter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so," *Reynolds* v. *Sims, supra,* 586, quoted with approval in *Burns* v. *Richardson,* 384 U.S. 73, 85 (1966), we shall, in accordance with the general practice in these cases, retain our jurisdiction pending appropriate action by the Massachusetts Legislature. A suitable decree will be filed.

Appendix "B."

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDMUND DINIS, ET AL.
v.
JOHN A. VOLPE, ET AL.
Civil Action No. 66-767-G

Judgment.

This action came on for further hearing before the Court, Woodbury, Senior Circuit Judge, and Wyzanski and Garrity, District Judges, and the issues having been duly heard on cross motions for summary judgment and a decision having been duly rendered,

It is Declared

that Chapter 57, section 1, of the General Laws of the Commonwealth of Massachusetts, as most recently amended by Acts of 1967, Chapter 472, effective July 26, 1967, complies with Art. I, § 2, of the Constitution of the United States and is valid.

It is ordered that judgment be entered for the defendants and the action be dismissed without costs.

Dated at Boston, Massachusetts, this 3rd day of October, 1967.

RUSSELL H. PECK
Clerk of Court

PETER WOODBURY
Senior Circuit Judge

CHARLES E. WYZANSKI, JR.
United States District Judge

W. ARTHUR GARRITY, JR.
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 66-767-G

EDMUND DINIS, ET AL.
Plaintiffs,
v.
JOHN A. VOLPE, as Governor of the Commonwealth of Massachusetts,
and
ELIOT L. RICHARDSON, as Attorney General of the Commonwealth of Massachusetts,
and
KEVIN H. WHITE, as Secretary of the Commonwealth of Massachusetts,
Defendants.

Woodbury,* *Senior Circuit Judge,* and Wyzanski and Garrity, *District Judges.*

Opinion of the Court.

October 3, 1967.

PER CURIAM. On February 15, 1967, this court handed down an opinion in this case, reported 264 F. Supp. 425, holding that the then current Massachusetts Congressional Apportionment Act, Chapter 315, Acts of 1962, General Laws Chapter 57 §1 as amended, did not conform to the "one person, one vote" principle and hence did not square with the command of Art. I §2 of the Constitution of the United States under the rule of *Wesberry* v. *Sanders,* 376 U.S. 1 (1964). But this court did not grant the relief requested by the plaintiffs. Instead the court retained its

*Sitting by designation.

jurisdiction pending appropriate action by the Massachusetts Legislature which was then in session. Subsequent to that decision the Massachusetts Legislature enacted and the Governor approved a further amendment of the above cited Act, Acts of 1967, Chapter 472, which established twelve new congressional districts as recommended by the majority of a legislative joint special committee. The plaintiffs complain of this new congressional apportionment on two grounds.

First they assert that the seats in the Massachusetts House and Senate are constitutionally malapportioned and on the basis of this assertion they argue that the Massachusetts Legislature is constitutionally incapable of establishing congressional districts in conformity with federal constitutional law. We do not consider whether the Massachusetts Legislature is or is not malapportioned. That issue is now pending in other litigation in both the Commonwealth and the federal courts. We content ourselves with rejecting out of hand the argument based on an asserted malapportionment.

We have not been made aware of nor have we found any case depriving a malapportioned legislature of its status as a *de facto* legislature. On the contrary the Court in *Reynolds* v. *Sims,* 377 U.S. 533, 586 (1964), commended the district court for affording a malapportioned legislature an opportunity to reapportion itself, see also *Maryland Committee* v. *Tawes,* 377 U.S. 656, 675 (1964), and in *Fortson* v. *Morris,* 385 U.S. 231 (1966), the Court held that a legislature was not disqualified by malapportionment from choosing a governor. If a malapportioned legislature may not only reapportion itself but also choose a governor we see no reason whatsoever why it may not establish congressional districts in conformity with federal constitutional requirements.

Second the plaintiffs contend that the new congressional apportionment still offends the "one person, one vote" principle. We do not agree.

Under the new Act the smallest district falls below the ideal by 4,524 persons and the largest district exceeds the ideal by 4,192 persons making a difference of 8,716 persons between the largest and smallest districts. The ratio between the smallest and largest districts is 1 to 1.020. It is true that the minority report of the legislative joint special committee would provide for slightly more numerically equal congressional districts.* But mathematical precision is not a constitutional requirement as we had occasion to point out before. The legislature has acted in a matter primarily for its determination. Its deviations from mathematical perfection are in our view obviously *de minimis*.

A suitable final judgment will be entered.

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*Under the minority's plan the smallest district falls below the ideal by 2,966 persons and the largest district exceeds the ideal by 2,832 persons making a difference of 5,798 persons between the largest and smallest districts. The ratio between the smallest and largest districts under the minority proposal is 1 to 1.013.

Appendix "C."

Chapter 315.

Massachusetts Acts of 1962, Chapter 315.

An Act establishing congressional districts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

Section 1. Chapter 57 of the General Laws is hereby amended by striking out section 1, as amended by chapter 556 of the acts of 1941, and inserting in place thereof the following section:—*Section 1.* For the purpose of electing representatives in the Congress of the United States, until otherwise provided by law, the commonwealth is divided into the following twelve districts, each of which shall elect one representative:

Number One,—Consisting of the cities and towns in Berkshire county; the towns in Franklin county; the cities of Holyoke and Westfield and the towns of Blandford, Chester, Granville, Montgomery, Russell, Southwick and Tolland, all in Hampden county; the city of Northampton and the towns of Amherst, Chesterfield, Cummington, Easthampton, Goshen, Hadley, Hatfield, Huntington, Middlefield, Pelham, Plainfield, Southampton, Westhampton, Williamsburg and Worthington, all in Hampshire county; and the towns of Athol, Petersham, Phillipston, Royalston and Templeton, all in Worcester county.

Number Two,—Consisting of the cities of Chicopee and Springfield and the towns of Agawam, Brimfield, East Longmeadow, Hampden, Holland, Longmeadow, Ludlow, Monson, Palmer, Wales, West Springfield and Wilbraham, all in Hampden county; the towns of Belchertown, Granby, South Hadley and Ware, all in Hampshire county; and the

towns of Brookfield, East Brookfield, North Brookfield, Sturbridge, Warren and West Brookfield, all in Worcester county.

Number Three,—Consisting of the city of Marlborough and the towns of Acton, Ashby, Ayer, Boxborough, Dunstable, Groton, Holliston, Hudson, Littleton, Maynard, Natick, Pepperell, Sherborn, Shirley, Stow, Townsend, Tyngsborough and Westford, all in Middlesex county; the towns of Bellingham, Franklin, Medway and Millis, all in Norfolk county; and the cities of Fitchburg, Gardner and Leominster and the towns of Ashburnham, Barre, Berlin, Blackstone, Bolton, Charlton, Clinton, Douglas, Dudley, Hardwick, Harvard, Hopedale, Hubbardston, Lancaster, Leicester, Lunenburg, Mendon, Milford, Millbury, Millville, New Braintree, Northbridge, Oakham, Oxford, Paxton, Princeton, Rutland, Southbridge, Spencer, Sterling, Sutton, Upton, Uxbridge, Webster, Westminster and Winchendon, all in Worcester county.

Number Four,—Consisting of the city of Waltham and the towns of Ashland, Framingham, Hopkinton, Sudbury, Watertown, Wayland and Weston, all in Middlesex county; the city of Worcester and the towns of Auburn, Boylston, Grafton, Holden, Northborough, Shrewsbury, Southborough, Westborough and West Boylston, all in Worcester county.

Number Five,—Consisting of the city of Lawrence and the town of Andover, both in Essex county; and the cities of Lowell, Melrose and Woburn and the towns of Bedford, Billerica, Burlington, Carlisle, Chelmsford, Concord, Dracut, Lexington, Lincoln, North Reading, Reading, Stoneham, Tewksbury, Wilmington and Winchester, all in Middlesex county.

Number Six,—Consisting of the cities of Beverly, Gloucester, Haverhill, Lynn, Newburyport, Peabody and Salem and the towns of Amesbury, Boxford, Danvers, Essex,

Georgetown, Groveland, Hamilton, Ipswich, Manchester, Marblehead, Merrimac, Methuen, Middleton, Nahant, Newbury, North Andover, Rockport, Rowley, Salisbury, Swampscott, Topsfield, Wenham and West Newbury, all in Essex county.

Number Seven,—Consisting of the towns of Lynnfield and Saugus, both in Essex county; the cities of Everett, Malden and Medford and the towns of Arlington, Belmont and Wakefield, all in Middlesex county; and the cities of Chelsea and Revere and the town of Winthrop, all in Suffolk county.

Number Eight,—Consisting of the cities of Cambridge and Somerville, both in Middlesex county; the town of Brookline in Norfolk county; and wards numbered 1, 2, 3, 21 and 22 in the city of Boston in Suffolk county.

Number Nine,—Consisting of wards numbered 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19 and 20 in the city of Boston in Suffolk county.

Number Ten,—Consisting of the cities of Attleboro, Fall River and Taunton and the towns of Berkley, Dighton, Easton, Freetown, Mansfield, North Attleborough, Norton, Raynham, Rehoboth, Seekonk, Somerset and Swansea, all in Bristol county; the city of Newton in Middlesex county; and the towns of Dover, Foxborough, Medfield, Needham, Norfolk, Plainville, Walpole, Wellesley, Westwood and Wrentham, all in Norfolk county.

Number Eleven,—Consisting of the city of Quincy and the towns of Avon, Braintree, Canton, Dedham, Holbrook, Milton, Norwood, Randolph, Sharon, Stoughton and Weymouth, all in Norfolk county; the city of Brockton in Plymouth county; and ward numbered 18 in the city of Boston in Suffolk county.

Number Twelve,—Consisting of the towns in Barnstable county; the city of New Bedford and the towns of Acushnet, Dartmouth, Fairhaven and Westport, all in Bristol

county; the towns in Dukes county; the town of Nantucket in Nantucket county; the town of Cohasset in Norfolk county; and the towns in Plymouth county.

SECTION 2. This act shall take effect upon its passage.

House of Representatives, March 28, 1962.
Passed to be enacted, WILLIAM H. FINNEGAN
Acting Speaker.
In Senate, April 2, 1962.
Passed to be enacted, JOHN E. POWERS,
President.

April 3, 1962.
Approved, at 2 o'clock and 40 minutes, P. M.
JOHN A. VOLPE, Governor.

THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE DEPARTMENT
State House, Boston

John A. Volpe
Governor

April 3, 1962

The Honorable Kevin H. White
Secretary of the Commonwealth
State House
Boston, Massachusetts

Dear Mr. Secretary:

I, John A. Volpe, pursuant to the provisions of Article XLVIII of the Amendments to the Constitution, the Referendum II, Emergency Measures, hereby declare in my opinion the immediate preservation of the public convenience requires that the law being Chapter 315 of the Acts of 1962, entitled "An Act Establishing Congressional Dis-

tricts'' and the enactment of which received my approval on April 3, 1962, should take effect forthwith.

I further declare that in my opinion said law is an emergency law and the facts constituting the emergency are as follows:

Postponement of the operation of this act for ninety days would defeat its purpose which is to immediately provide for the establishment of Congressional Districts.

Very truly yours,
JOHN A. VOLPE
Governor
Commonwealth of Massachusetts

OFFICE OF THE SECRETARY, Boston, April 4, 1962.

I, Kevin H. White, Secretary of the Commonwealth, hereby certify that the accompanying statement was filed in this office by His Excellency the Governor of the Commonwealth of Massachusetts at ten o'clock and thirty minutes, A.M., on the above date, and in accordance with Article Forty-eight of the Amendments to the Constitution said chapter takes effect forthwith, being chapter three hundred and fifteen of the acts of nineteen hundred and sixty-two.

KEVIN H. WHITE
Kevin H. White
Secretary of the Commonwealth

MASSACHUSETTS ACTS OF 1967, CHAPTER 472

AN ACT ESTABLISHING CONGRESSIONAL DISTRICTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 57 of the General Laws is hereby amended by striking out section 1, as most recently amended by chapter 315 of the acts of 1962, and inserting in place thereof the following section:

Section 1.

For the purpose of electing representatives in the Congress of the United States, until otherwise provided by law, the commonwealth is divided into the following twelve districts, each of which shall elect one representative:

Number One,—Consisting of the cities and towns in Berkshire county; the towns in Franklin county; the cities of Holyoke and Westfield and the towns of Agawam, Blandford, Chester, Granville, Montgomery, Russell, Southwick, Tolland and West Springfield, all in Hampden county; the city of Northampton and the towns of Amherst, Chesterfield, Cummington, Easthampton, Goshen, Hadley, Hatfield, Huntington, Middlefield, Pelham, Plainfield, Southampton, Westhampton, Williamsburg and Worthington, all in Hampshire county; and the towns of Athol, Barre, Hardwick, Hubbardston, New Braintree, Oakham, Petersham, Phillipston, Royalston, Rutland and Templeton, all in Worcester county.

Number Two,—Consisting of the cities of Chicopee and Springfield and the towns of Brimfield, East Longmeadow, Hampden, Holland, Longmeadow, Ludlow, Monson, Palmer, Wales and Wilbraham, all in Hampden county; the towns of Belchertown, Granby, South Hadley and Ware, all in Hampshire county; and the towns of Auburn, Brookfield, Charlton, Dudley, East Brookfield, Leicester, North Brook-

field, Oxford, Southbridge, Spencer, Sturbridge, Warren, Webster and West Brookfield, all in Worcester county.

Number Three,—Consisting of the cities of Marlborough, Newton and Waltham and the towns of Acton, Ashby, Ayer, Boxborough, Concord, Hudson, Lincoln, Littleton, Maynard, Shirley, Stow, Townsend, Watertown, Westford and Weston, all in Middlesex county; and the cities of Fitchburg, Gardner and Leominster and the towns of Ashburnham, Berlin, Bolton, Clinton, Harvard, Lancaster, Lunenburg, Sterling, Westminster and Winchendon, all in Worcester county.

Number Four,—Consisting of the towns of Ashland, Framingham, Holliston, Hopkinton, Sudbury and Wayland, all in Middlesex county; the towns of Bellingham, Franklin and Medway, all in Norfolk county; and the city of Worcester and the towns of Blackstone, Boylston, Douglas, Grafton, Holden, Hopedale, Mendon, Millbury, Milford, Millville, Northborough, Northbridge, Paxton, Princeton, Shrewsbury, Southborough, Sutton, Upton, Uxbridge, Westborough and West Boylston, all in Worcester county.

Number Five,—Consisting of the city of Lawrence and the towns of Andover and Methuen, all in Essex county; and the cities of Lowell and Woburn and the towns of Bedford, Billerica, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Groton, Lexington, North Reading, Pepperell, Reading, Tewksbury, Tyngsborough, Wakefield and Wilmington, all in Middlesex county.

Number Six,—Consisting of the cities of Beverly, Gloucester, Haverhill, Lynn, Newburyport, Peabody and Salem and the towns of Amesbury, Boxford, Danvers, Essex, Georgetown, Groveland, Hamilton, Ipswich, Lynnfield, Manchester, Marblehead, Merrimac, Middleton, Nahant, Newbury, North Andover, Rockport, Rowley, Salisbury, Swampscott, Topsfield, Wenham and West Newbury, all in Essex county.

Number Seven,—Consisting of the cities of Chelsea and Revere and the town of Winthrop, all in Suffolk county; and the cities of Everett, Malden, Medford and Melrose and the towns of Arlington, Belmont, Stoneham and Winchester, all in Middlesex county; and the town of Saugus in Essex county.

Number Eight,—Consisting of the cities of Cambridge and Somerville, both in Middlesex county; the town of Brookline in Norfolk county; and wards numbered 1, 2, 5, 21 and 22 in the city of Boston in Suffolk county.

Number Nine,—Consisting of wards numbered 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17 and 19 in the city of Boston in Suffolk county.

Number Ten,—Consisting of the cities of Attleboro, Fall River and Taunton and the towns of Berkley, Dighton, Easton, Freetown, Mansfield, North Attleborough, Norton, Raynham, Rehoboth, Seekonk, Somerset, Swansea and Westport, all in Bristol county; the towns of Lakeville and Middleborough, both in Plymouth county; the towns of Natick and Sherborn, both in Middlesex county; and the towns of Dover, Foxborough, Medfield, Millis, Needham, Norfolk, Plainville, Sharon, Walpole, Wellesley, Westwood and Wrentham, all in Norfolk county.

Number Eleven,—Consisting of the city of Quincy and the towns of Avon, Braintree, Canton, Dedham, Holbrook, Milton, Norwood, Randolph and Stoughton, all in Norfolk county; the city of Brockton in Plymouth county; and wards numbered 18 and 20 in the city of Boston in Suffolk county.

Number Twelve,—Consisting of the towns in Barnstable county; the city of New Bedford and the towns of Acushnet, Dartmouth and Fairhaven, all in Bristol county; the towns in Dukes county, the town of Nantucket in Nantucket county; the towns of Cohasset and Weymouth, both in Norfolk county; and the towns of Abington, Bridgewater, Carver, Duxbury, East Bridgewater, Halifax, Hanover,

Hanson, Hingham, Hull, Kingston, Marion, Marshfield, Mattapoisett, Norwell, Pembroke, Plymouth, Plympton, Rochester, Rockland, Scituate, Wareham, West Bridgewater and Whitman, all in Plymouth county.

Section 2. This act shall take effect upon its passage.

Approved July 26, 1967.

CONSTITUTION OF THE UNITED STATES

ARTICLE I.

Section. 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

[Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons.] The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made,

the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Amendment XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State depriye any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or

other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Appendix "D."

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDMUND DINIS, ET AL.
v.
JOHN A. VOLPE, ET AL.
} Civil Action No. 66-767-G

Affidavit.

EDMUND DINIS, of New Bedford, County of Bristol and Commonwealth of Massachusetts, being duly sworn, deposes and says:

1. That he is a plaintiff in the above-entitled action;

2. That the Massachusetts General Court, House and Senate, are malapportioned and are therefore unconstitutional, in accordance with the decision of *Reynolds v. Sims*, 377 U. S. 533, 577-78, 12 *L.ed.* 2d 536-37 (6/15/64);

3. That the provisions of the Constitution of the Commonwealth of Massachusetts which govern redistricting of the General Court are unconstitutional and leave the General Court without real authority to reapportion themselves;

4. That statutes governing reapportionment of the General Court are unconstitutional and in violation of the one man-one vote requirements as set forth by the United States Supreme Court in *Reynolds* v. *Sims*, supra.

EDMUND DINIS

Subscribed and sworn to before me this eleventh day of September, A. D. 1967,

LILLIAN TRAVERS
Notary Public

My commission expires January 26, 1968.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDMUND DINIS, ET ALS.
v.
JOHN A. VOLPE, ET ALS } Civil Action No. 66-767-G

Plaintiffs' Motion to Continue Further Hearing on Cross Motions for Summary Judgment.

The plaintiffs state that there is now pending in this Court a Complaint, Dinis et als v. Volpe et als, Civil Action No. 67-534-M; that judgment on said action will have a direct bearing on the motions for summary judgment heretofore filed in this action, which motions have been assigned for further hearing on September 18, 1967 at 12 o'clock noon.

WHEREFORE the plaintiffs move that the further hearing on cross motions for summary judgment be continued until such time as there is an adjudication of Civil Action No. 67-534-M.

EDMUND DINIS,
Pro se and as attorney for plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDMUND DINIS, ET AL,
v.
JOHN A. VOLPE, ET AL. } Civil Action No. 66-767-G

Application for Injunctive Relief.

1. On February 15, 1967, this Court rendered a unanimous opinion in which it found that the Plaintiffs had carried their burden of demonstrating the invidiousness or unconstitutionality of the present Massachusetts congressional district arrangement.

2. The Court, however, refrained from entering an injunctive decree or order, although it retained jurisdiction of the cause, calling attention to the fact the Massachustts Legislature was in session and "legislative reapportionment is primarily a matter for legislative consideration and determination, and . . . . judicial relief becomes appropriate only when a legislature fails to *reapportion according to federal constitutional requisites* in a timely fashion after having adequate opportunity to do so.' *Reynolds v. Sims,* 377 U. S. 533 (emphasis supplied).

3. The Massachusetts Constitution, in accordance with Amendment Articles XXI, XXII and LXXI, provides for a bicameral General Court including (a) a 240-member House of Representatives which is apportioned by joint action of the General Court and county apportionment agencies, and (b) a 40-member Senate which is apportioned by statute alone. The Massachusetts Constitution requires that these apportionments must occur immediately after each mid-decade state census.

4. Amendments XXI and XXII require that:

(a) The General Court, at its first regular session following the return of each State Decennial Census

apportion the memberships of the Senate throughout the Commonwealth, and the House to the several counties of the Commonwealth equally, as nearly as may be, according to their respective numbers of legal voters, such apportionment in each case to take effect in January of the fourth year following such Decennial Census; and

(b) The respective County Commissioners (or special commissioners acting in their stead) divide each county into the number of representative districts assigned to the county by the aforesaid apportionment by the General Court, equally, as nearly as may be, according to the respective numbers of legal voters disclosed by the State Decennial Census without dividing towns of less than 12,000 inhabitants, precincts of larger towns, or wards of cities.

5. The present apportionment of the Senate was completed on May 27, 1960 and became effective on that date in the fourth month after the fifth January following January 1, 1955, rather than in the fourth January following the 1955 State Decennial Census, as required by the Massachusetts Constitution.

6. The present apportionment of the House under the 1955 Decennial Census was not completed until August 20, 1963, and was effective in January, 1965, the tenth January after January 1, 1955 rather than the fourth January following that census, as required by the Massachusetts Constitution.

7. The present 1967 session of the General Court is the first regular session following the return of the 1965 Decennial Census. Under the provisions of Amendments XXI and XXII, the General Court is required to apportion the membership of the Senate throughout the Commonwealth; and to apportion the 240 members of the House among the several counties *during this its current session,* equally,

as nearly as may be, on the basis of the results of the 1965 Decennial Census. The first Wednesday in the fourth January following the 1965 State Decennial Census will be January 1, 1969. Elections of members of the Senate and House to serve on and after that date must be held during 1968 under the provisions of Amendments XXI and XXII.

8. At the present time there exists substantial disparities in the populations of the districts represented by the present members of the House and Senate. Schedule "A" attached demonstrates the value of one vote in each Senatorial district, based on the total population and total number of legal voters in the present districts as of the 1955 and 1965 census.

9. The average population of the Commonwealth's Senatorial districts, based on the 1955 census, is 120,941; the 1965 census is 132,382, including an average legal voters total in 1965 of 62,765 and 66,192 in 1965. Particular attention is directed to the Middlesex and Worcester Senatorial District, with a population in 1965 of 212,265, making it the largest Senatorial district. The Third Suffolk County Senatorial District, with a population of 84,366 is the smallest Senatorial district. The vote in the Third Suffolk County Senatorial District is worth approximately three times as much as a vote in the Middlesex and Worcester Senatorial District.

10. The average population of the Commonwealth's Representative districts, based on the 1955 census, is 20,157, and on the 1965 census is 22,064 (including an average legal voter total in 1955 of 10,460, and 11,032 in 1965).

11. Based on the 1955 average count of 10,460 legal votes per House seat, approximately one-eighth of the total membership of the House is elected by voter variations greater than 15 per cent of the average. The same result is achieved, in fact accentuated, by the 11,032 legal vote average under the 1965 census.

12. It is also pointed out that the weight of one vote is not materially affected by the variations that do exist between a population and a legal voter basis of apportionment.

13. Examples of extreme disparities are shown in the following counties using the 1965 population census and the value of one vote in each district expressed as a ratio of one vote in an average district (1.000):

(a) *Nantucket County:* value of one vote—5.941 or nearly six times the value of one vote in an average Representative district.

(b) *Dukes County:* value of one vote—3.709 or over three and one half times the value of one vote in an average Representative district.

(c) *Fifteenth Suffolk Representative District:* value of one vote—1.943—nearly two times the one vote average.

(d) *Fifth Hampden Representative District:* value of one vote—0.773—comparing with (e) below.

(e) *Seventh Hampden Representative District:* value of one vote—1.473, or presently two times the value of the vote of Fifth Hampden Representative District, and nearly one and a half times the value of the average.

(f) Based upon the 1965 population census, it is to be pointed out that Suffolk County has eight more representative districts than is merited by population. The 1965 population of Suffolk County is 706,212 and the average population per representative district for 1965 is 22,064.

(g) Plymouth County, with a population of 299,256 is entitled to approximately thirteen House districts, but presently has only eleven.

(h) Norfolk County is entitled to twenty-five seats, but presently has only twenty-one.

(i) Middlesex County is entitled to fifty-seven seats, but presently has only fifty-five.

See Schedule "B" annexed.

14. The Plaintiffs say that the present State Representative Districts cannot be reapportioned within the constitutional framework of the Fourteenth Amendment of the United States unless there is a revision of the Massachusetts Constitution. The Massachusetts Constitution requires:

(a) That apportionment in each case, after the census of legal voters, is to take effect in January of the fourth year following such Decennial Census.

(b) That each county in the Commonwealth is guaranteed a representative seat.

(c) That the County Commissioners or others must apportion representative districts without dividing towns of less than 12,000 inhabitants, precincts of larger towns, or wards of cities.

(d) That General Laws, Chapter 54, Section 158 (as amended) states as follows:

"COUNTY COMMISSIONERS. There shall be chosen by the voters of each of the counties, except Suffolk and Nantucket, at the biennial state election in nineteen hundred and forty, and in every fourth year thereafter, two county commissioners for said county, and at the biennial state election in nineteen hundred and forty-two, and in every fourth year thereafter, one county commissioner for said county, and in addition at each biennial state election such number of county commissioners as may be required to be chosen under section one hundred and forty-four to fill vacancies.

"*Not more than one of the county commissioners shall be chosen from the same city or town.* If two

persons residing in the same city or town shall appear to have been chosen to said offices, only the person receiving the larger number of votes shall be declared elected; but if they shall receive an equal number of votes, no person shall be declared elected. *If a person residing in a city or town where a county commissioner who is to remain in office also resides, shall appear to have been chosen, he shall not be declared elected.* If the person is not declared elected by reason of the above provisions, the person receiving the next highest number of votes for the office, and who resides in another city or town, shall be declared elected." (Emphasis supplied)

These Boards do not and need not comply with the one man-one vote requisite if their only duties are administrative. However, under Amendment Article XXI of the Massachusetts Constitution, one of their duties is to determine the number of representative districts within their respective counties. Accordingly, it is submitted that this violates the one man-one vote requirement of the equal protection clause of the Fourteenth Amendment of the United States Constitution.

Further, we state that the Massachusetts Legislature, sitting in joint constitutional convention, has rejected a call for a general constitutional convention.

15. At the present time, a Special Legislative Committee on reapportionment for the Legislature has filed a bill, H.R. # . In drawing the plans, the Committee ignored its state constitutional directive to apportion legal voters and counties. Instead, the Committee is endeavoring to determine House seats according to population. The Committee, however, decided to follow the State constitutional directive in that each county should have at least one representative, despite the small populations of Dukes County

and Nantucket County, and even though the combined populations of the two counties, 9,662, is far less than half the number required to support even a single House seat under "one man-one vote" rulings of the Supreme Court.

Further, the Committee found that although Suffolk County population merited only thirty-two seats, it has recommended thirty-three; that Middlesex County merited fifty-eight seats by population, but it has recommended only fifty-seven.

See Schedule "C" annexed.

16. As a result of the substantial differences shown in the current apportionment of the House and Senate, and as a result of these continued variations as shown in part of the General Court's redistricting plan, the Plaintiffs are being and will continue to be deprived of their constitutional rights as set forth in the Fourteenth Amendment to the United States Constitution.

17. The Plaintiffs submit that the use of a malapportioned legislature to determine districts with respect to the nomination or election of Representatives to the Congress of the United States is to perpetuate the electoral vices which this Court has decreed to be unconstitutional.

18. In view of the aforementioned, the Plaintiffs respectfully move that the Court now enter an appropriate order granting the injunctive relief prayed for in the Complaint as filed with this Court.

19. Plaintiffs also respectfully request that if the Court desires to hear further argument on this application, it set the same for 10:00 A. M. July 6, 1967, or as soon thereafter as the Court finds it convenient to hear counsel. Unless the Defendants request it, or the Court deems it warranted, Plaintiffs waive further oral argument on this application.

Respectfully submitted,

EDMUND DINIS, pro se and as
Attorney for the Plaintiffs

AFFIDAVIT

I HEREBY CERTIFY that on this twenty-eighth day of June, 1967, copies of the within Application were mailed, postage prepaid, to the Honorable John A. Volpe, Governor of the Commonwealth of Massachusetts, Honorable Elliot L. Richardson, Attorney General of the Commonwealth of Massachusetts, and Honorable Kevin H. White, Secretary of the Commonwealth, of the Commonwealth of Massachusetts at their respective offices in the State House, Boston, Massachusetts.

EDMUND DINIS

SCHEDULE "A"

See record for application for injunctive relief for entire schedule.

SCHEDULE "B"

See record for application for injunctive relief for entire schedule.

Schedule "C"

County	1965 Population	Reps. Merited by Population	Number Proposed	Number Now
Barnstable	73,557	3.33	3	3
Berkshire	145,597	6.59	6	7
Bristol	415,242	18.82	19	19
Dukes	5,949	0.26	1	1
Essex	608,996	27.60	27	28
Franklin	57,687	2.61	3	3
Hampden	435,281	19.72	20	19
Hampshire	100,065	4.53	4	4
Middlesex	1,280,235	58.02	57	55
Nantucket	3,714	0.16	1	1
Norfolk	553,578	25.09	25	21
Plymouth	299,256	13.56	13	11
Suffolk	706,216	32.00	33	40
Worcester	609,909	27.64	28	28
Totals	5,295,281		240	240

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JOHN F. DAVIS, CLERK

Supreme Court of the United States.

OCTOBER TERM, 1967.

No. 882.

EDMUND DINIS ET AL.,
Appellants,

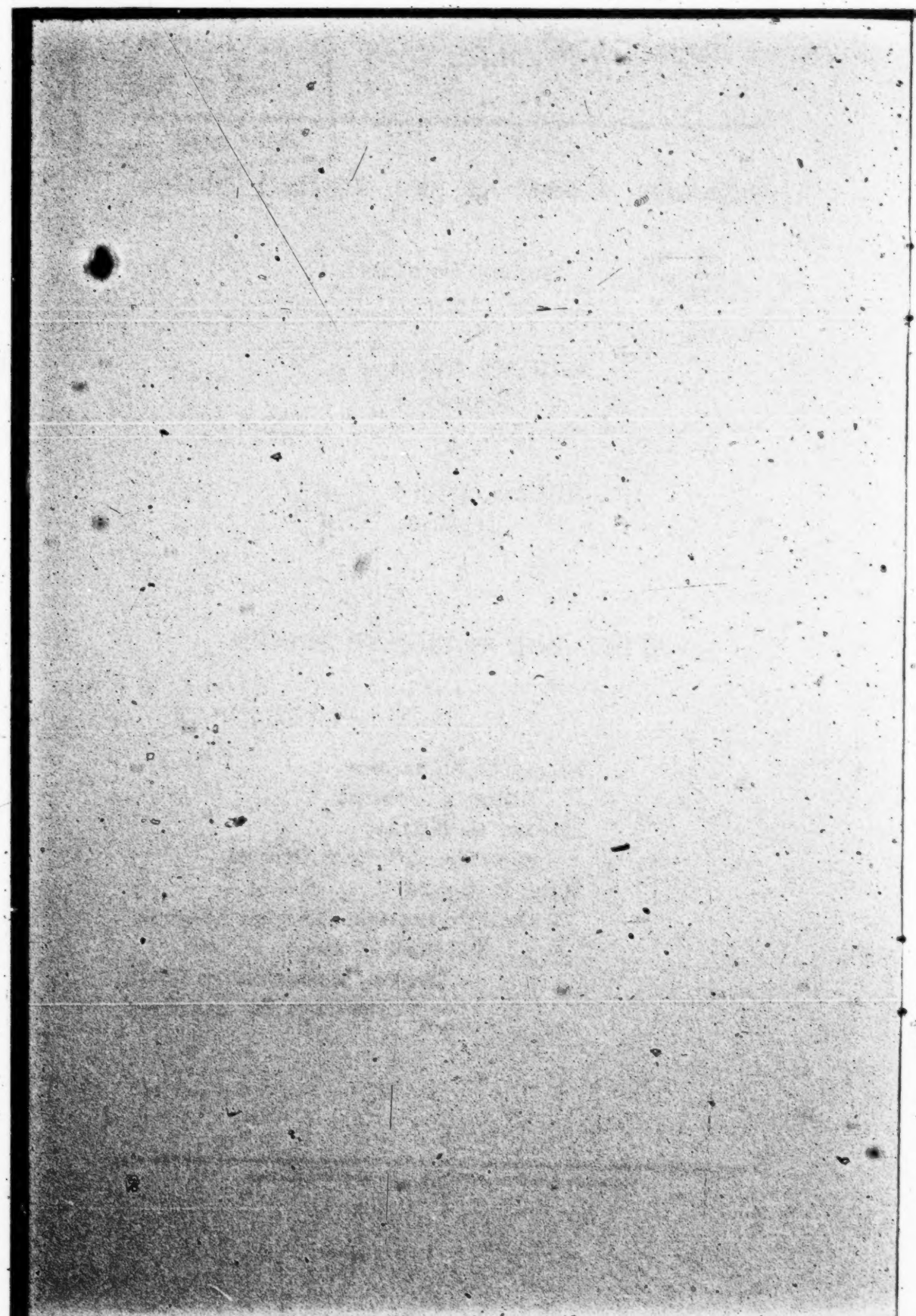
v.

JOHN A. VOLPE ET AL.,
Appellees.

APPELLEES' MOTION TO AFFIRM.

ELLIOT L. RICHARDSON,
Attorney General,
HOWARD M. MILLER,
Assistant Attorney General,
MARK L. COHEN,
Deputy Assistant Attorney General,
373 State House,
Boston, Massachusetts 02133,
Attorneys for Appellees.

ADDISON C. GETCHELL & SON, INC., LAW PRINTERS, BOSTON.



Supreme Court of the United States.

OCTOBER TERM, 1967.

No. 882.

EDMUND DINIS ET AL.,
Appellants,
v.
JOHN A. VOLPE ET AL.,
Appellees.

APPELLEES' MOTION TO AFFIRM.

The appellees, in accordance with Rule 16 1 (c), hereby move that the judgment of the United States District Court for the District of Massachusetts be affirmed on the ground that it is manifest that the question on which the decision of this case depends is so unsubstantial that it needs no further argument.

Statement of Case.

This is an appeal from an opinion and final judgment of a duly constituted three-judge United States District Court for the District of Massachusetts declaring that the present Massachusetts Congressional Apportionment (chapter 57, section 1, of the General Laws of the Commonwealth of Massachusetts, as most recently amended by Acts of 1967,

chapter 472, effective July 26, 1967) complies with article I, section 2, of the Constitution of the United States and is valid (Jur. St. 19-22).

Acts of 1967, chapter 472, was enacted subsequent to an interlocutory decree of the District Court which had declared that the Congressional Apportionment of Massachusetts did not conform to the "one person, one vote" principle, and hence did not conform with the command of article I, section 2, of the Constitution of the United States under the rule of *Wesberry* v. *Sanders*, 376 U.S. 1 (1964). (Jur. St. 20.) At that time the District Court withheld injunctive relief prayed for by appellants, and instead the Court retained its jurisdiction pending appropriate action by the Massachusetts Legislature (Jur. St. 18).

Appellants do not appeal from the determination that Acts of 1967, chapter 472, conforms with the "one man, one vote" principle. Their sole ground of appeal is that a malapportioned legislature does not have the power to establish congressional districts in conformity with federal constitutional law.

The District Court did not consider whether the Massachusetts Legislature is or is not malapportioned, since that issue is now pending in other litigation in both the Commonwealth and federal courts (Jur. St. 21). It did, however, reject out of hand appellants' argument. It noted that this Court, "in *Reynolds* v. *Sims*, 377 U.S. 533, 586, commended the district court for affording a malapportioned legislature an opportunity to reapportion itself, see also *Maryland Committee* v. *Tawes*, 377 U.S. 656, 675 . . . ," and that "in *Fortson* v. *Morris*, 385 U.S. 231, the Court held that a legislature was not disqualified by malapportionment from choosing a governor." The District Court then held that "If a malapportioned legislature may not only reapportion itself but also choose a governor we see no

reason whatsoever why it may not establish congressional districts in conformity with federal constitutional requirements." (Jur. St. 21.)

Argument.

Appellants' appeal is misguided in the light of this Court's declaration on several occasions that legislative reapportionment is "primarily a matter for legislative consideration and determination, and that judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so." *Reynolds* v. *Sims,* 377 U.S. 533, 586. See also *Maryland Committee* v. *Tawes,* 377 U.S. 656, 675.

Appellants' argument that a malapportioned legislature does not have the power to apportion its congressional districts to conform with federal requirements is to fly in the face of clearly enunciated precedent.

Indeed, this Court summarily rejected the argument in *Fortson* v. *Morris,* 385 U.S. 231, that a legislature, previously determined by the Supreme Court to be malapportioned, could be prevented from discharging its duty to choose a governor. The holding of the District Court is manifestly correct that, if a malapportioned legislature may reapportion itself and choose a governor, there is no reason why it may not establish congressional districts in conformity with federal constitutional requirements. (Jur. St. 21.)

If appellants seek to distinguish between the power of a malapportioned legislature to reapportion itself on the one hand and the power to apportion its congressional districts on the other, it is a distinction without legal substance.

Conclusion.

For the foregoing reasons it is respectfully submitted that the argument of appellants should be rejected out of hand in the same manner it was rejected by the District Court, and that the judgment of the District Court should be affirmed.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967.

DINIS ET AL. *v.* VOLPE ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS.

No. 882. Decided January 15, 1968.

PER CURIAM.

The motion to affirm is granted and the judgment is affirmed.